

Town of Frederick Board of Trustees



Eric Doering, Mayor

Sue Wedel, Mayor Pro Tem
Liberta Hattel, Trustee
Amy Schiers, Trustee

Tony Carey, Trustee
Gerry Pfirsch, Trustee
Jim Wollack, Trustee

AM 2009-041

TO CONSIDER A LICENSE AGREEMENT WITH THE BOULDER WELD DITCH COMPANY AT THE BULRUSH WETLANDS

Agenda Date: May 12, 2009

Attachments:

- a. Proposed Ditch Agreement
- b. Resolution
- c. Photos of ditch pre-maintenance
- d. Photos of ditch post maintenance
- e. Vicinity Map
- f. 11x17 map of the proposed wetland improvements

Fiscal Note: See discussion below



Marcia Lierman, Finance Director

Submitted by:



Todd Tucker, Staff Planner

Approved for Presentation:



Derek Todd, Town Administrator

AV Use Anticipated Projector _____ Laptop _____

Certification of Board Approval:

Town Clerk

Date

Summary Statement:

In developing the Bulrush Wetlands as a park, agreements are required to formalize use of the ditch easement with the Boulder Weld Ditch Company.

The Ditch Company has a prescriptive right to access and conduct maintenance activities for their ditch, and may place spoils along the travel way of the ditch. Placement of ditch spoils is not typically conducted in a careful manner and could result in unintentionally filling the wetland. Since the Town owns the property and has taken on maintenance of the wetland, it is incumbent upon the Town to insure that the wetlands are maintained in accordance with the wetland charter and ensure that no adverse impacts result from Ditch Company or other maintenance activities. Furthermore, the ditch easement is currently undefined. This agreement will define the limits of the ditch company access and use while providing for public access and the proposed recreational amenities.

Detail of Issue/Request:

As negotiated with the Boulder Weld Ditch Company, the attached agreement defines the limits of use by the ditch company as 25 feet from the center line of the ditch. It also establishes the right for the Town to install the proposed trail, a bridge, interpretive signs, and a wildlife blind along the ditch, provides for public use, and indemnifies both the Town and the Ditch Company from harm, except from acts of negligence. If approved, the agreement indicates that the Town will provide dump trucks for removal of the ditch spoils during cleaning operations. This will minimize the potential for fill to be placed within the chartered wetlands and preserve other enhancements, such as the trail, interpretive signs, etc. This cleaning operation occurs once every five or more years. If the Town so chooses, the Town may also take on cleaning of the ditch segment within the Wetlands.

The Town currently spends about \$30,000 per year on maintenance of the wetland site. If approved, the agreement indicates that the Town will provide dump trucks once every five years to remove the ditch cleaning spoils. The estimated cost to provide dump trucks for removal of the ditch spoils is about \$1,500, anticipated once every five or more years. The agreement also provides the opportunity for the Town to conduct the ditch cleaning activities as opposed to just providing dump trucks. This would entail providing a track hoe and dump trucks to clean the ditch and haul away spoils and may cost around \$5,000 once every five or more years. The value in taking on the ditch cleaning responsibility is that the Town would be able to control when and how ditch cleaning activities occur, better coordinate resources, and protect site features such as the wetlands, underground drain tile, the trail, vegetation, and other site improvements. Please note that in anticipation of the proposed trail improvements, the Boulder Weld Ditch Company cleaned out this ditch segment last fall. Therefore, cleaning will not be required for five or more years. Related to the ditch companies cleaning, a drain tile was breached. While the ditch company repaired the damage to the effected drain tile, ancillary impacts occurred which required additional maintenance work by the Town at a cost of about \$2,500. In addition, our wetland consultant expressed concern that future placement of ditch spoils along the edge of the ditch, as occurred historically, may result in fill within the jurisdictional and chartered wetland. Lastly, once we install the proposed improvements, it may be in the Town's interest to assist with, or possibly assume the responsibility to clean this ditch segment to minimize adverse impacts to the wetlands as noted above.

The Ditch Company is not required to recognize the Town's obligation to maintain the chartered wetland and has a prescriptive right to access and maintain the ditch. Currently this includes access to the site and placing ditch spoils along the ditch, which could result in fill within the wetland. In negotiations with the Ditch Company, they indicated that they have a prescriptive right to access and maintain the ditch. Historically, this includes placing the ditch spoils along the ditch and they have no interest in changing this practice. Therefore, it may be in the Town's interest to approve the attached agreement, establishing the limits of the ditch easement and provide dump trucks for future ditch maintenance (anticipated once every five years) to meet our obligations for preserving the wetlands and

protect the trail improvements. As noted in the agreement, if desired by the Town, the Town may also assume the responsibility of cleaning out the ditch at some point in the future.

The attached agreement has been reviewed and approved by the Ditch Company, Planning, Engineering, and the Town Attorney.

Provided the ditch agreement is approved by the Board, the bid for trail work will be sent out to the public within the next few weeks. Currently, we anticipate opening the site to the public in July.

Legal/Political Considerations:

Alternatives/Options:

Actions: The Board of Trustees may consider several options regarding the agreement including:

- ☐ Approval as proposed;
- ☐ Denial as proposed;
- ☐ Approval of the agreement subject to modifications.

Financial Considerations:

Funds to support this operation would come from the Open Space fund as part of the maintenance line item.

Staff Recommendation:

Staff recommends approval of the agreement as proposed.